

**MILLCREEK, UTAH**  
**ORDINANCE NO 17-**

**AN ORDINANCE GRANTING A CABLE LICENSE TO COMCAST OF UTAH II TO  
OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN MILLCREEK;  
SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE  
LICENSE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF  
THE CABLE TELEVISION SYSTEM; AND PRESCRIBING PENALTIES FOR  
VIOLATION OF THE LICENSE**

**WHEREAS**, Millcreek (the “City”) is authorized to grant and renew cable licenses for the installation, operation, and maintenance of cable television systems and to otherwise regulate cable communications services within the City’s boundaries by virtue of federal and state statutes, by the City's police powers, by the City's authority over its public rights-of-way, and by the City's other powers and authority; and

**WHEREAS**, Comcast of Utah II, Inc., a Colorado corporation, provides cable services and desires to renew its franchise to construct, operate and maintain a cable television system within the City's boundaries; and

**WHEREAS**, the City’s municipal council (the “*Council*”) met in regular session on January 9, 2017 to consider, among other things, the adoption of an ordinance granting and/or renewing such a franchise to Comcast of Utah II, Inc.; and

**WHEREAS**, the Council finds that (a) the development of competitive cable television services is essential and can provide great economic and social benefit to the City's residents, and (b) because of the complex and rapidly changing technology associated with such services, the public convenience, safety and general welfare can be achieved by establishing regulatory powers, and (c) the intent of this ordinance is to attain the best possible public benefit for the City's residents; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the City's residents to adopt an ordinance granting a non-exclusive franchise to Comcast of Utah II, Inc. to operate a cable television system within the City's boundaries.

**NOW, THEREFORE, BE IT ORDAINED** by the Council as follows:

SECTION 1  
Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

A. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

B. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.

C. "Cable Act" shall mean the Communications Act of 1934, including the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.

D. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

E. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

F. "FCC" means Federal Communications Commission, or successor governmental entity thereto.

G. "Franchising Authority" means the city of Millcreek or the lawful successor, transferee, or assignee thereof.

H. "Grantee" means Comcast of Utah II, Inc., or the lawful successor, transferee, or assignee thereof.

I. "Gross Revenue" means to the fullest extent any and all revenue in whatever form, from any source, directly or indirectly received by the Grantee or Affiliate of the Grantee, according to generally accepted accounting principles consistently applied, that would constitute a Cable Operator of the Cable System under the Cable Act, derived from or attributable to the operation of the Cable System to provide Cable Services. Gross Revenues include, but are not limited to, basic, expanded basic, and pay service revenues, revenues from installation, removal,

reinstatement, rental of converters, the applicable percentage of the sale of local and regional advertising, and any leased access revenues.

Gross Revenues do not include (i) revenue from sources excluded by law; (ii) revenue derived by Grantee from services provided to its Affiliates (iii) late payment fees; (iv) charges other than those described above that are aggregated or bundled with amounts billed to Cable Service Subscribers such as charges for Broadband or Telephone services; (v) fees or taxes which are imposed directly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency including the FCC User Fee; (vi) revenue which cannot be collected by the Grantee and are identified as bad debt, provided, that if revenue previously representing bad debt is collected, this revenue shall then at time of collection be included in Gross Revenues for the collection period; (vii) refundable deposits, investment income, programming launch support payments, or advertising sales commissions; and (viii) Internet services to the extent that such service is not considered to be a Cable Service as defined by law.

J. "Person" means an individual, partnership, association, joint-stock company, trust, corporation, or governmental entity but not the Franchising Authority.

K. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over wires, cables, conductors, ducts, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System

L. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

M. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

N. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

## SECTION 2

### Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service

Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

2.2 Authority over Non-Cable Services. To the extent allowed by law, the Franchising Authority shall retain the authority to regulate and receive compensation for Non-Cable Services. If the Grantee is allowed by law and chooses to provide Non-Cable Services, the Grantee and the Franchising Authority will negotiate the terms and fees in accordance with applicable law.

2.3 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party under this Agreement, may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority. Each and every term, provision or condition herein is subject to the provisions of State law, federal law, and Franchising Authority ordinances and regulations enacted pursuant thereto. Notwithstanding the foregoing, the Franchising Authority may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

2.4 Competitive Equity The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within Franchising Authority; provided, the Franchising Authority agrees that, within ninety (90) days of the Grantee's request, it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees; insurance; System build-out requirements; security instruments; Public, Education and Government access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

2.5 Term. The Franchise granted hereunder shall be for an initial term of Five (5) years commencing on the effective date of the Franchise as set forth in subsection 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

### SECTION 3 Standards of Service

3.1 Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way at Grantee's expense to a condition reasonably

comparable to the condition of the Public Way existing immediately prior to such disturbance. All replacement and restoration work under this section shall be subject to the approval and acceptance of the Franchising Authority.

3.3 Relocation for the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee shall, at its own expense, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Franchising Authority shall bear the cost of relocation under this Section to the extent such request for relocation or disconnection is for aesthetic purposes only. The Grantee shall in all cases have the right of abandonment of its property.

3.4 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation and/or requesting Grantee's relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth in the public way in order to access and maintain the Cable System. Nevertheless, nothing in this paragraph 3.5 shall authorize the Grantee to trim trees or other natural growth not located in the public way without the prior written consent of the owner of such trees or other natural growth.

3.6 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7 Underground & Aerial Construction. Grantee shall use its best efforts to construct, install and place its cables, wires, drop lines and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed aboveground if existing technology reasonably requires, but shall be of such size and design and shall be so located as to minimize visual and physical impact on adjacent yards and landscapes insofar as it is technically and economically feasible and not unsafe. However, all amplifier boxes, pedestal-mounted terminal boxes and all other equipment placed aboveground shall be kept in good repair and replaced as needed. If Grantee has used its best efforts to construct and install its cables, wires, drop lines and other facilities underground, then in any part of the Service Area where there are certain cables, wires and other like facilities of a public utility or public utility district suspended aboveground from poles, Grantee may, if it has approval from the owners of such poles, and the Franchising Authority, construct and install its cables, wires and other facilities from the same poles in the same manner (height, configuration, etc.) as such public utility or public utility district. Nothing in this

Agreement shall require Grantee to relocate any existing above ground infrastructure or cable system underground unless Grantee is required to do so under Section 3.3 herein.

3.8 Access to Open Trenches. The Franchising Authority shall endeavor to include the Grantee in the platting process for any new subdivision. Grantee shall negotiate with developer for payment of reasonable costs for such access.

3.9 Extensions of the Cable System. Grantee shall provide Cable Services upon request from any Person in the Service Area who resides at a distinct address (including, but not limited to, single family homes, multi-dwelling units and business locations) that is qualified for Cable Service in accordance with Grantee's reasonable and nondiscriminatory servicing criteria. Except as otherwise provided in this Franchise, Grantee shall provide Cable Services within seven (7) days of a request by any Person who resides at a distinct address that is qualified for Cable Service in accordance with Grantee's reasonable and nondiscriminatory servicing criteria.

3.10 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However if any area does not meet Grantee's reasonable and nondiscriminatory servicing criteria, then any Subscriber requested build out shall be built at the discretion of the Grantee, and may include a requirement that the Subscriber(s) share the capital costs of extending the Cable system. In the event that Grantee decides to build out the Cable System to an area that is currently unserved, The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any non - Standard Installation charges to extend the Cable System from the tap to the residence.

3.11 Cable Service to Public Buildings. Franchising Authority acknowledges that complimentary services reflect a voluntary initiative on the part of Grantee. Grantee does not waive any rights it may have regarding complimentary services under federal law or regulation. Subject to applicable law, should Grantee elect to offset governmental complimentary services against franchise fees, Grantee shall first provide Franchising Authority with ninety (90) days' prior notice. The Grantee, upon request shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), sheriff sub-station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

3.12 Technical Standards. The Grantee is responsible for insuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right

to obtain a copy of tests and records required in accordance with appropriate rules, but has no authority, pursuant to federal law, to enforce compliance with such standards.

3.13 Emergency Use. Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

3.14 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed.

3.15 Customer Service. The Franchising Authority hereby adopts the customer service standards set forth in Part 76, § 76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

3.16 Educational and Government Access Channels.

A. Grantee's Provision of Education and Government Access Channel. Upon 120 days written notice from the Franchise Authority, after the completion of construction of the Fiber Optic return line pursuant to Section 3.16C and once the equipment in connection therewith is made operational, Grantee shall make available to Franchise Authority 1 Channel for PEG use, as provided for in this Section. When first-run programming on the first educational and governmental access channel occupies fifty percent of the hours between 11:00 a.m. and 11 p.m., for any twelve consecutive weeks, the Franchising Authority may request the use of one additional channel for the same purpose. The additional channel must maintain programming twenty-five percent of the hours between 11:00 a.m. and 11:00 p.m. for twelve consecutive weeks. If this level of programming is not maintained, the channel will return to the Grantee for its use. The Grantee also reserves the right to program the designated educational and governmental channels during the hours not used by the Franchising Authority or other governmental entities. If programming time is not used by Franchising Authority and is available for sharing, the channel may be shared with other municipalities receiving programming from the common head end receive site location. The Franchising Authority shall agree to indemnify, save and hold harmless the Grantee from and against any liability resulting from the use of the aforementioned educational and governmental channels by the Franchising Authority, except for liability resulting from program time shared with other municipalities.

B. Educational and Government Access Capital Contributions. At any time during the term of this Franchise, the Franchising Authority may require that the Grantee prospectively provide a "Capital Contribution," paid annually during the remaining term of the Franchise, to be used specifically for educational and governmental access as provided for in Paragraph 3.16.A. ("Grantee's Provision of Educational and Government Access Channels"). The Franchising Authority shall give the Grantee ninety (90) days written notice of such a requirement. The amount of the Capital Contribution payable by the Grantee to the Franchising Authority shall not exceed One Dollar and Twenty Cents (\$1.20) per year per primary connection. The Franchising Authority agrees that all amounts due to the Franchising Authority by the Grantee as the Capital Contribution may be added to the price of cable

services, prorated monthly, and collected from the Grantee's Subscribers as "external costs," as such term is used in 47 C.F.R. 76.922. In addition, all amounts paid as the Capital Contribution may be separately stated on Subscribers' bills as permitted in 47 C.F.R. 76.985. The Capital Contribution will be payable by Grantee to the Franchising Authority after; a) the approval of the Franchising Authority, if required, to the inclusion of the Capital Contribution on Subscribers' bills including any required approval pursuant to 47 C.F.R. 76.933; b) notice to Grantee's Subscribers of the inclusion; and c) the collection of the Capital Contribution by the Grantee from its Subscribers. The "Capital Contributions" are not to be considered in the calculation of Franchise Fees pursuant to this Franchise.

C. Return Lines/Access Origination. If requested in writing by the Franchising Authority, Grantee shall construct and maintain a Fiber Optic return line to the Headend from the production facilities of the Franchising Authority or Designated Access Provider as requested in writing by the Franchising Authority. The new return line shall be completed within one year from the written request of the Franchising Authority, or as otherwise agreed to by the parties. All actual construction costs incurred by Grantee from the nearest interconnection point to the Franchising Authority or Designated Access Provider shall be paid by the Franchising Authority or the Designated Access Provider. Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the Franchising Authority. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the Grantee or the Designated Access Provider. The new return line shall be completed within one year from the request of the Franchising Authority or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

## SECTION 4

### Regulation by the Franchising Authority

#### 4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee of five percent (5 %) of annual Gross Revenue (as defined in subsection 1.1 of this Franchise). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due quarterly and payable within sixty (60) days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

C. The Franchising Authority acknowledges that all amounts paid by the Grantee as Franchise Fees may be passed through to customers and identified as a separate line item on the bill in accordance with 47 U.S.C 542 added to the price of Cable Services and collected from the

Grantee's customers as "external costs" as such term is used in 47 C.F.R. 76.922. In addition, all amounts paid as Franchise Fees may be separately stated on customers' bills as permitted in 47 C.F.R. 76.985.

4.2 Rents and Charges. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

B. In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this subsection, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price that is determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during that period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee, and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

## SECTION 5 Books and Records

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

On an annual basis, upon thirty (30) prior written notice, the Franchising Authority, including the Franchising Authority's Auditor or his/her authorized representative, shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration and enforcement of this franchise, in accordance with GAAP. If the audit shows that franchise fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit. Such cost shall not exceed three thousand dollars (\$3,000) for each year of the audit period without Grantee's prior written consent. The Franchising Authority's right to audit and the Grantee's obligation to retain records related to a franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the Franchising Authority.

## SECTION 6 INSURANCE AND INDEMNIFICATION

### 6.1 Insurance Requirements.

A. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or

have a retroactive date before the effective date of this License, and (ii) be maintained for a period of at least three (3) years following the end of the term of this License or contain a comparable “extended discovery” clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the City.

B. All policies of insurance shall be issued by insurance companies licensed to do business in the state of Utah and either:

- 1.A. Currently rated A- or better by A.M. Best Company; and
- 1.B. For construction contracts only, the insurer must also have an A.M. Best Company financial size category rating of not less than VII.

—OR—

- 2. Listed in the United States Treasury Department’s current Listing of Approved Sureties (Department Circular 570), as amended.

C. Grantee shall furnish evidence of insurance, acceptable to the City, verifying compliance with the insurance requirements herein prior to Grantee’s written acceptance of this License.

D. If any work to be performed by Grantee is subcontracted, Grantee shall require its contractor to secure and maintain all minimum insurance coverages required of Grantee hereunder. No failure by such contractor to secure and maintain such insurance coverage shall excuse Grantee from the obligation to assure such coverage and to otherwise fully comply with this section.

E. Grantee's insurance policies shall be primary and non-contributory to any other coverage available to the City. The workers' compensation, general liability and auto liability policies shall be endorsed with a waiver of subrogation in favor of the City.

F. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, Grantee shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by the City, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to the City.

G. All required policies shall provide that coverage thereunder shall not be canceled or modified without providing (30) days prior written notice to the City.

H. In the event Grantee fails to maintain and keep in force any insurance policies as required herein City shall have the right at its sole discretion to obtain such coverage and charge Grantee for the costs of said insurance.

6.2 Required Insurance Policies. Grantee, at its own cost, shall secure and maintain during the term of this License, including all renewal terms, the following minimum insurance coverage:

A. Workers' compensation and employer's liability insurance as required by the State of Utah. Proof of workers' compensation coverage is required unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations and partnerships. In the event any work is subcontracted, Grantee shall require its contractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

B. Commercial general liability insurance, on an occurrence form, with the City as an additional insured, in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate and \$2,000,000 products completed operations policy aggregate. The policy shall protect the City, Grantee, and any contractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Grantee's operations under this License, whether performed by Grantee itself, any contractor, or anyone directly or indirectly employed or engaged by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations. The policy shall be primary and not contributing to any other policy or coverage available to the City whether such coverage is primary, contributing or excess.

C. Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, in the minimum amount of \$500,000 per person, \$500,000 per accident, \$500,000 per occurrence for property damage, or a single combined limit of \$500,000.

6.3 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection.

Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

6.4 Bonds & other Surety. Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial, and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. The Grantee and the Franchising Authority recognize that the costs associated with bonds and other surety may be ultimately borne by the Subscribers in the form of increased rates for Cable Services.

Initially, no bond or other surety will be required. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore. The Franchising Authority agrees that in no event shall it require a bond or other related surety in an aggregate amount greater than \$10,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise.

## SECTION 7

### Enforcement and Termination of Franchise

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in default of any provision of the franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
  - B. Commence an action at law for monetary damages or seek other equitable relief;
- or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

7.5 Revocation. Should the Franchising Authority seek to revoke the franchise after following the procedures set forth in subsections 7.1 -7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

## SECTION 8 Miscellaneous Provisions

8.1 Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 Entire Agreement. This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

8.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/ acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

Franchising Authority  
Millcreek  
3932 South 500 East Millcreek UT 84107

With a copy to:

Millcreek City Attorney c/o John Brems  
2798 West Matterhorn Taylorsville, UT 84129

The notices or responses to the Grantee shall be addressed as follows:

Comcast Cable Communications  
9602 South 300 West  
Sandy, UT 84070

with a copy to:

Comcast  
Corporation Legal Department  
1701 John F Kennedy Blvd.  
Philadelphia, PA 19103

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

8.4 Descriptive Headings. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5 Severability. If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8.6 Effective Date. The effective date of this Franchise is the 9<sup>th</sup> day of January, 2017, pursuant to the provisions of applicable law. This Franchise shall expire on the 9<sup>th</sup> day of January, 2022, unless extended by the mutual agreement of the parties.

Considered and approved this 9<sup>th</sup> day of January, 2017.

Millcreek

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Jeff Silvestrini, Mayor

ATTEST:

APPROVED AS TO FORM:

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Leslie Van Frank, Acting City Recorder

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John Brems, City Attorney

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2017, subject to applicable federal, state and local law

Comcast of Utah II, Inc.

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By: Richard C Jennings  
Title: Regional Senior Vice President –  
Cable Mgmt.